

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

By Cornelia G. Clark, Clerk of Supreme Court

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Web Site: www.wicourts.gov

Wisconsin Supreme Court Case Access: www.wicourts.gov/wscca/

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **January 10, 2006**. Please direct any comments regarding this table to Cornelia G. Clark, Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2002AP1056	<u>State v. S. Schulpius</u> Does a presumption of constitutionality attach when a statute is challenged as applied? Are the defendant's due process rights being violated because he has been incarcerated more than 4 years after the circuit court issued an order for his immediate release from secure institutional care to supervised placement? Should <u>State v. Morford</u> , 2004 WI 5, 659 Wis. 2d 480, 655 N.W.2d 546, apply to cases on direct appeal?	04/20/2004 REVW Affirmed 01/10/2006 2006 WI 1	1 Milw	03/24/2004 Pub 2004 WI App 39 270 Wis 2d 427 678 NW2d 369
2003AP421	<u>Dairyland Greyhound Park v. J. Doyle, et al</u> Does the <u>Wisconsin Constitution</u> , art. IV, § 24, as amended in 1993, and Wis. Stat. § 14.035, prohibit the Governor from entering into agreements for Indian gaming compacts as provided for under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701-02?	01/11/2005 CERT Oral Arg 09/07/2005	4 Dane	---
2003AP1307	<u>K. Haferman, et al v. D. Vangor, M.D., et al</u> What is the limitations period in which a developmentally disabled minor may commence a medical malpractice suit? Does Wis. Stat. §§ 893.16(1) and 893.56, when considered together, create a time gap in the limitations period?	12/15/2004 REVW Reversed & Remanded 12/30/2005 2005 WI 171	4 Sauk	11/17/2004 Pub 2004 WI App 206 277 Wis. 2d 156 689 NW2d 636
2003AP1534	<u>Royster-Clark, Inc. v. Olsen's Mill, Inc.</u> Whether the circuit court's findings regarding the existence of an agreement to orally modify a contract between the parties was erroneous under the provisions of Wis. Stat. 402.201(1)?	09/08/2005 REVW Oral Arg 02/21/2006	4 Waush	07/27/2005 Unp
2003AP1731	<u>Orion Flight Services, Inc. v. Basler Flight Service</u> Does aviation fuel qualify as motor vehicle fuel under the Unfair Sales Act, Wis Stat. § 100.30, making it subject to a minimum price markup under the statute?	03/08/2005 REVW Oral Arg 10/12/2005	2 Winne	12/21/2004 Pub 2004 WI App 222 277 Wis 2d 819 692 NW2d 804
2003AP1732	<u>G. Pinczkowski, et al. v. Milwaukee County</u> (Consol. w/2003AP2127) Is evidence of voluntary sales of properties adjacent to an entity that possesses, but is not threatening to use, its power of eminent domain admissible on the issue of fair market value of the subject property? Is evidence of a third party's interest in buying a condemned property admissible as indirect evidence of fair market value? Does the initial "carve out" value as determined by a condemnor under Wis. Stat. § 32.19(4)(a)1 change when the compensation amount for the condemned property increases?	01/11/2005 REVW Affirmed 12/01/2005 2005 WI 161	1 Milw	09/28/2004 Pub 2004 WI App 171 276 Wis 2d 520 687 NW2d 791

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2003AP1806	<u>Metropolitan Ventures v. GEA Associates, et al</u> Does the rule set forth in <u>Nodolf v. Nelson</u> , 103 Wis. 2d 656, 309 N.W.2d 397 (Ct. App. 1981) that requires specificity in financing contingency terms, extend beyond real estate to business sale contracts?	12/15/2004 REVV Oral Arg 10/11/2005	1 Milw	10/28/2004 Pub 2004 WI App 189 276 Wis 2d 625 688 NW 2d 722
2003AP2068	<u>State v. C. Mark</u> Did the admission, during trial, of the respondent's compelled statements to his parole officer violate the respondent's Fifth Amendment right to remain silent and his Fourteenth Amendment right to due process of law proceedings as incorporated under Wis. Stat. § 980.05(1m); see <u>State v. Lombard</u> , 2004 WI 95, 273 Wis. 2d 538, 684 NW.2d 103, and <u>State v. Zanelli</u> , 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App 1998)? Did the circuit court erroneously exercise its discretion when it excluded evidence concerning the conditions of the defendant's probation supervision?	07/28/2005 REVV Oral Arg 01/10/2006	4 Jeffer	04/29/2005 Pub 2005 WI App 62 280 Wis 2d 436 701 NW2d 598
2003AP2108	<u>Hoida, Inc. v. M&I Midstate Bank, et al</u> Did the court of appeals err in finding that construction lenders and disbursing agents are immune from subcontractor negligence claims for public policy reasons?	12/15/2004 REVV Oral Arg 11/08/2005	4 Porta	10/28/2004 Pub 2004 WI App 191 276 Wis 2d 705 688 NW2d 691
2003AP2127	<u>G. Pinczkowski v. Milwaukee County</u> (Consol. w/2003AP1732) Is evidence of voluntary sales of properties adjacent to an entity that possesses, but is not threatening to use, its power of eminent domain admissible on the issue of fair market value of the subject property? Is evidence of a third party's interest in buying a condemned property admissible as indirect evidence of fair market value? Does the initial "carve out" value as determined by a condemnor under Wis. Stat. § 32.19(4)(a)1 change when the compensation amount for the condemned property increases?	01/11/2005 REVV Affirmed 12/01/2005 2005 WI 161	1 Milw	09/28/2004 Pub 2004 WI App 171 276 Wis 2d 520 687 NW2d 791
2003AP2177	<u>D. Kontowicz, et al v. American Standard Ins. Co.</u> Consol. w/2003AP2534 Does Wis. Stat. § 628.46, which imposes a 12% interest penalty on an insurer for "overdue payment" of an insurance claim, apply to a third-party personal injury claim against a policy by virtue of its reference to Wis. Stat. § 646.31(2)(d)?	04/06/2005 REVV Oral Arg 11/15/2005	2 Wauke	02/24/2005 Pub 2005 WI App 22 278 Wis 2d 664 693 NW2d 112

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2003AP2180	<u>State v. J. Maloney</u> Was trial counsel ineffective for failing to argue that the special prosecutor violated SCR 20:4.2 when he directed the defendant's girlfriend to wear a concealed recording device in order to obtain statements from the defendant; for failing to challenge the admissibility of the taped conversations; and by asking a state's witness, on cross-examination, whether the witness believed anything the defendant had told him during the investigation, see <u>State v. Haseltine</u> , 120 Wis. 2d 92, 352 N.W.2d 673 (Ct. App. 1984)?	10/19/2004 REVW 04/12/2005 Fond du Lac Jurisdiction retained; additional briefing ordered 06/10/05 2005 WI 74 Oral Arg 11/09/2005	3 Brown	07/28/2004 Pub 2004 WI App 141 275 Wis 2d 557 685 NW2d 620
2003AP2245	<u>D. Steinbach, et al. v. Green Lake Sanitary District</u> Was an assessment levied against the petitioners' property for public sanitary sewer service properly made within the sanitary district's special assessment power?	01/11/2005 REVW Oral Arg 10/06/2005	2 Green Lake	10/28/2004 Pub 2004 WI App 192 276 Wis 2d 639 688 NW2d 740
2003AP2316	<u>C. Shaw v. G. Leatherberry, et al</u> What standard of proof applies to cases alleging excessive use of force by the police brought pursuant to 42 U.S.C. § 1983 in Wisconsin courts?	03/08/2005 CERT Oral Arg 10/07/2005 Reversed 12/06/2005 2005 WI 163	4 Dane	---
2003AP2457	<u>Wisconsin Auto Title Loans, inc. v. K. Jones</u> Does the Federal Arbitration Act preempt the Wisconsin Consumer Act (WCA) with respect to the unconscionability of a contractual arbitration provision in a consumer contract when the consumer is seeking to invalidate the provisions because it effectively waives the right to a class action of WCA claims under the contract?	09/08/2005 REVW Oral Arg 02/21/2006	1 Milw	04/29/2005 Pub 2005 WI App 86 280 Wis 2d 823 696 NW2d 214
2003AP2534	<u>L. Buyatt v. Metro. Property & Casualty Ins. Co., et al</u> Consol. w/2003AP2177 Does Wis. Stat. § 628.46, which imposes a 12% interest penalty on an insurer for "overdue payment" of an insurance claim, apply to a third-party personal injury claim against a policy by virtue of its reference to Wis. Stat. § 646.31(2)(d)?	04/06/2005 REVW Oral Arg 11/15/2005	2 Wauke	02/24/2005 Pub 2005 WI App 22 278 Wis 2d 664 693 NW2d 112
2003AP2555	<u>M. Landwehr v. B. Landwehr</u> What is the proper standard of review when determining a motion to modify physical placement in light of Wis. Stat. § 767.24(4)(a)(2) that requires a court to set a placement schedule that maximizes the amount of time a child may spend with each parent, and Wis. Stat. 767.325(1)(b)2 that presumes that the current allocation of physical placement is in the best interest of a child?	06/01/2005 REVW Oral Arg 12/13/2005	1 Milw	02/24/2005 Unp

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2003AP2628	<u>Racine Harley-Davidson, Inc. v. State of Wis. Div. of Hearings & Appeals</u> Is "great weight deference" the correct standard of review to the division's interpretation of a statute that it has never before interpreted and the issue is a question of law involving the application of statutory and contract principles? If "great weight deference" is the correct standard of review, was the division's ruling unreasonable because it directly contravened Wis. Stat. §§ 218.0101(1) and 218.0116(8), and directly contravened the statute's intent, history, and purpose? Is a manufacturer's modification of a dealer's assigned territory a modification of the parties' "agreement" under Wis. Stat. § 218.0116(8)?	03/08/2005 REVV Oral Arg 11/08/2005	2 Racine	01/26/2005 Pub 2005 WI App 6 278 Wis 2d 508 692 NW2d 670
2003AP2662	<u>State v. J. Brown</u> Did the colloquy during the evidentiary hearing for the petitioner, an illiterate 17-year-old charged with three Class B felonies, meet the requirements set forth in <u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) to establish that the petitioner actually understood the elements of the offenses, the consequences of his pleas, and the rights he was waiving?	06/01/2005 REVV Oral Arg 12/06/2005	1 Milw	Summary Disp.
2003AP2668	<u>All Star Rent A Car, Inc. v. DOT</u> Does the circuit court have competency to proceed where a petition for Wis. Stat. Ch. 227 licensing review fails to name and serve the Division of Hearing and Appeals within 30 days of the agency's decision? Does a statutory ambiguity exist in Ch. 227 such that the identity of the decision-making agency in motor vehicle dealer licensing could be the WisDOT and, if so, is it reasonable under the circumstances for a litigant to name and serve the WisDOT as a respondent, where the Division of Hearing and Appeals followed notice procedures of Wis. Stat. § 227.48(2) and <u>DOT v. Office of Com'r of Transp.</u> , 159 Wis. 2d 271; 863 N.W.2d 870 (Ct. App. 1990)?	02/09/2005 REVV Oral Arg 09/27/2005	4 Dane	10/28/2004 Pub 2004 WI App 198 276 Wis 2d 793 688 NW2d 681
2003AP2755	<u>J. Marder v. Bd. of Regents of the U.W. System</u> Are proceedings initiated by a University of Wisconsin Chancellor for the purpose of terminating the employment of a tenured professor a "contested case" under Wis. Stat. Chapter 227?	12/15/2004 REVV Affirmed 11/29/2005 2005 WI 159	4 Dane	09/28/2004 Pub 2004 WI App 177 276 Wis 2d 186 687 NW2d 832
2003AP2802-CR	<u>State v. D. Roberson</u> Was trial counsel ineffective for failing to file a motion to suppress the testimony of a police officer identifying the defendant shortly after the defendant's unlawful arrest?	11/11/2005 REVV	1 Milw	09/20/2005 Pub 2005 WI App 195 704 NW2d 302

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2003AP2865	<u>The Warehouse II v. State of Wis. Dept. of Transportation</u> Whether litigation expenses should be awarded under Wis. Stat. § 32.28(1), which allows "fee shifting" in condemnation actions, where the property owner prevailed on its challenge to the condemnor's right to take its property on the ground that the condemnor failed to negotiate in good faith?	12/15/2004 REVV Oral Arg 09/28/2005	2 Winne	11/17/2004 Unp
2003AP2968-CR	<u>State v. C. E. Young</u> What is the test for determining when and whether a seizure has occurred within the meaning of the State and federal constitutions? Was the defendant seized when a police officer stopped his squad car in the roadway behind the defendant's parked car, put on his flashing lights, and illuminated a spot light on the defendant's car? If the defendant was seized while he was sitting in the car, did the police officer have reasonable suspicion to warrant the seizure? Is the evidence sufficient to support the defendant's conviction for obstructing and resisting?	02/09/2005 REVV Oral Arg 10/11/2005	2 Kenos	12/21/2004 Pub 2004 WI App 227 277 Wis 2d 715 690 NW2d 866
2003AP3055-CR	<u>State v. R. W. Kely</u> Does a defendant waive his or her right to challenge convictions on the ground that the convictions violate the defendant's double-jeopardy rights when the defendant pleads guilty to two criminal offenses that, on their face, appear to be two distinct chargeable offenses? What is the remedy if, on remand, the defendant is successful in establishing that the two criminal offenses are multiplicitious?	02/09/2005 REVV Oral Arg 09/09/2005	4 Wood	12/21/2004 Unp
2003AP3258	<u>D. LaCount v. General Casualty Co., et al</u> Does Wis. Stat. § 632.32(3)(a) require separate policy limits for the named insured who sponsored his child's driver's license, and his daughter, a minor, who negligently drove her car into the side of a family's van, killing the father and severely injuring others?	04/06/2005 REVV Oral Arg 12/01/2005	3 Brown	12/21/2004 Unp
2003AP3349	<u>Sauk County v. Aaron J.J.</u> Did the court's acceptance of a stipulation that grounds for a Wis. Stat. Ch. 51 mental commitment existed without conducting a colloquy to ensure that the stipulation was entered into knowingly, intelligently and voluntarily violate due process rights?	01/11/2005 REVV Dism. 12/01/2005 2005 WI 162	4 Sauk	11/17/2004 Unp

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2003AP3353	<u>J. Hilton v. DNR</u> Did the administrative law judge use established legal methodology, exercise administrative expertise, and correctly balance the interests of riparian landowners against the interests of the public? Was an abatement of boat slip spaces along lakefront property an unconstitutional taking of property without due process?	12/15/2004 REVV Oral Arg 11/09/2005	2 Green Lake	Summary Disp.
2003AP3521	<u>B. Shira v. Reliance National Indemnity</u> Does an insurer's reducing clause, based upon Wis. Stat. § 632.32(5)(a2), allow for the reduction of uninsured motorist benefits by worker's compensation funds paid into the state treasury because the insured had no dependents?	03/08/2005 REVV Oral Arg 11/08/2005	1 Milw	01/26/2005 Pub 2005 WI App 10 278 Wis 2d 354 691 NW2d 882
2004AP36	<u>T. Huml v. R. Vlazny, et al</u> Whether a written settlement agreement and release discharging a defendant from civil liability for all past, present and future claims arising out of his or her criminal conduct precludes the crime victim from enforcing a subsequent judgment for unpaid restitution entered after the defendant has been released from probation?	10/14/2005 CERT	2 Walw	---
2004AP64	<u>M. Fazio v. Dept. of Employee Trust Funds</u> Whether Wis. Stat. § 40.73(1)(c) violates Art. I, § 13 of the state constitution as a taking for public use without just compensation by requiring that a lump sum death benefit be paid at the "present value on the day following the date of death" regardless of when application for the lump sum benefit is presented to Dept. of Employee Trust Funds.	06/01/2005 REVV Oral Arg 11/16/2005	4 Dane	04/29/05 Pub 2005 WI App 87 280 Wis. 2d 837 696 NW2d 563
2004AP188	<u>AKG Real Estate v. P. Kosterman, et al</u> Does the "changed conditions" doctrine operate to involuntarily terminate an expressly granted easement when the easement no longer serves the purpose of the servient estate owner?	01/11/2005 REVV Oral Arg 11/15/2005	2 Racine	12/21/2004 Pub 2004 WI App 232 277 Wis 2d 509 691 NW2d 711
2004AP239	<u>Rainbow Country Rentals v. Ameritech Publishing</u> Is Discount Fabric House of Racine, Inc. v. Wisconsin Telephone Co., 117 Wis.2d 587; 345 N.W.2d 417 (1984) still viable after subsequent changes, such as deregulation and elimination of a monopoly, in the telecommunications industry?	12/15/2004 CERT Affirmed 11/22/2005 2005 WI 153	2 Wauke	---

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2004AP276	<u>D. Zastrow, et al v. Journal Communications, Inc., et al</u> Whether the six-year statute of limitations in either Wis. Stat. § 893.52 or 893.43 applies to negligent breach of fiduciary duty claims against the trustees of an express trust? Does the two-year statute of limitations in Wis. Stat. § 893.57, limiting an action for "intentional tort to the person," apply to trustee negligence that cause purely economic injuries? Does the two-year statute of limitations begin to accrue after the termination of the fiduciary relationship or immediately upon the breach of duty?	10/14/2005 REVV Oral Arg 02/23/2006	4 Jeffer	08/31/2005 Pub 2005 WI App 178 703 NW2d 673
2004AP319	<u>Northwest Airlines, Inc. v. Wis. DOR, et al</u> Is the recent Wisconsin legislation creating exemptions that provide significant tax incentives to airline carriers that operate "hub facilities" in Wisconsin unconstitutional under the dormant Commerce Clause of the United States Constitution?	04/06/2005 CERT Oral Arg 12/13/2005	4 Dane	---
2004AP352	<u>1325 North Van Buren v. T-3 Group, et al</u> Whether the application of the economic loss doctrine is strictly limited to contracts for the purchase and sale of goods governed by Article 2 of the Uniform Commercial Code; see <u>Insurance Company of North American v. Cease Electric</u> , 2004 WI 139, 276 Wis. 2d 361, 688 N.W2d 462, and <u>Van Lare v. Vogt</u> , 2004 WI 110, 274 Wis. 2d 631, 683 N.W2d 46?	10/03/2005 REVV Oral Arg 02/22/2006	1 Milw	06/22/2005 Pub 2005 WI App 121 701 NW2d 13
2004AP356	<u>G. H. Rocker, et al v. USAA Casualty Ins Co., et al</u> Does a full-service car wash fall within the definition of a "motor vehicle handler" found in Wis. Stat. § 632.32(2)(b)? Does the holding in <u>Heritage Mutual Insurance Co. v. Wilber</u> , 2001 WI App 247, 248 Wis. 2d 111, 635 N.W.2d 631, that all policies covering a motor vehicle, including, presumably, a commercial umbrella liability policy, must conform to the requirements of Wis. Stat. § 632.32, retain its vitality, since Wis. Stat. § 632.32 has been amended, and significantly altered, and now requires, <i>inter alia</i> , uninsured motorist coverage, medical payments and coverage, and prohibits exclusion of coverages for relatives of the insured? Was <u>Gorzalski v. Frankenmuth Mutual Ins. Co.</u> , 145 Wis. 2d 794, 429 N.W.2d 537 (Ct. App 1988), decided correctly when it failed to enforce the requirement of coverage for a motor vehicle handler as mandated by Wis. Stat. § 632.32(6)(a)?	02/09/2005 CERT Oral Arg 11/16/2005	1 Milw	---

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2004AP377	<u>J. Lassa v. T. Rongstad, et al</u> What balancing test should Wisconsin courts use when deciding whether the identity of anonymous speakers must be disclosed in the context of a defamation action brought by a public official? When a Wisconsin court has applied the appropriate balancing test and concluded that discovery should be allowed, can a litigant who refuses to comply assert that he or she should not be sanctioned based on <u>Burnett v. Alt</u> , 224 Wis. 2d 72, 589 N.W.2d 21 (1999)?	03/08/2005 CERT Oral Arg 11/09/2005	4 Dane	---
2004AP468	<u>Burbank Grease Services v. L. Sokolowski</u> Does Wis. Stat. § 134.90(6) preempt the common law cause of action for breach of fiduciary duty? Does the disclosure of confidential, proprietary computer data constitute a disclosure of "restricted access information" within the meaning of Wis. Stat. § 943.70(2) (a) 6?	05/11/2005 REVV Oral Arg 12/02/2005	4 Dane	02/25/2005 Pub 2005 WI App 28 278 Wis 2d 698 693 NW2d 89
2004AP487	<u>D. Rebernick, et al v. Wausau General Ins. Co., et al</u> Under Wis. Stat. § 632.32(4m), is an insurance company obligated to advise consumers of the availability of Uninsured Motorist Coverage (UIM) in an umbrella policy? If an insurer fails to provide notice of the availability of UIM coverage in an umbrella policy, does the consumer have a right to reformation of the policy at a later date?	03/08/2005 REVV Oral Arg 01/10/2006	1 Milw	01/26/2005 Pub 2005 WI App 15 278 Wis 2d 461 692 NW2d 348
2004AP548-W	<u>State ex rel. M. Coleman v. G. McCaughtry, et al</u> Did the court of appeals violate due process by applying the doctrine of laches to the petitioner's habeas corpus petition without an evidentiary hearing, where material issues of fact remain in dispute and the record is inconclusive regarding the unreasonableness of delay and the prejudice caused to the State?	03/08/2005 REVV Oral Arg 10/12/2005	4 Rock	Memo Opn.
2004AP630-CR	<u>State v. F. Shomberg</u> Did the circuit court err by excluding expert witness testimony relating to the witness' subjective identification of a suspect in a police lineup? Did the circuit court err by excluding evidence that the defendant expressed a willingness to take a polygraph examination?	03/08/2005 REVV Oral Arg 09/30/2005	4 Dane	01/26/2005 Unp

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2004AP688	<u>Progressive Northern Ins. Co. v. E. Hall, et al</u> Does Wis. Stat. § 632.32(3)(a) require an insurer to provide the same type of uninsured motorist coverage to an occupant of a vehicle as it does to a named insured? Does Wis. Stat. § 632.32(5)(e) preclude an insurer from denying primary uninsured motorist coverage to an occupant of a vehicle pursuant to an "other insurance" clause? Does finding that a portion of a provision is invalid require invalidating the entire provision? Does public policy demand reversal?	05/11/2005 REVV Oral Arg 12/01/2005	1 Milw	01/26/2005 2005 WI App 17 278 Wis 2d 499 692NW2d 355
2004AP767	<u>Robin K. v. Lamanda M.</u> What is the applicable standard to be used by the trial court to award guardianship of a child to a non-parent over a parent's objection?	02/09/2005 REVV Oral Arg 10/06/2005	4 Sauk	12/21/2004 Unp
2004AP803-CR	<u>State v. J. Campbell</u> Whether the holding in <u>State v. Bouzek</u> , 268 Wis. 2d 642, 484 N.W2d 362 (Ct. App. 1992) is correct in recognizing a fraud exception to the general rule that bars a collateral attack against an order or judgment of another judicial body in the context of a criminal proceeding? If so, (1) is the fraud exception properly limited to jurisdictional fraud; (2) does the "clean hands" doctrine apply; and (3) what are the respective roles of the circuit court and the jury when addressing a fraud exception?	08/25/2005 CERT Oral Arg 01/11/2006	2 Walw	---
2004AP824	<u>P. McGee, et al v. C. Bates, et al</u> Does a defendant who fails to timely answer a complaint and against whom default judgment is entered subsequently have a right to contribution from another defendant who was voluntarily dismissed from that lawsuit, where there is no joint or mutual liability between the defendants?	03/08/2005 REVV Vol Dism. 11/29/2005	1 Milw	01/26/2005 Pub 2005 WI App 19 278 Wis 2d 588 691 NW2d 920
*2004AP914-CR	<u>State v L. Teipelman</u> In a motion for resentencing based upon the circuit court's alleged reliance upon inaccurate information at sentencing, does the movant need to prove actual reliance by the court or prejudicial reliance? For sentencing purposes, is there a distinction between reliance on prior convictions and charged facts that did not result in convictions?	12/14/2005 REVV	4 Richl	08/31/2005 Pub 2005 WI App 179 703 NW2d 683

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2004AP958-CR	<p><u>State v. B. Marquardt</u> Consol. w/2004AP1609-CR</p> <p>Does the search warrant application in this case meet the third test set out in <u>United States v. Leon</u>, 468 U.S. 897 (1984) that it must not be so lacking in indicia of probable cause as to render the officers' belief in its existence entirely unreasonable?</p> <p>When considering that issue, may the court consider facts known by the officers by not included in the search warrant application?</p> <p>Did the investigation in these cases meet the "significant investigation" test set out in <u>State v. Eason</u>, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 62?</p> <p>Does the doctrine of inevitable discovery apply if the officers had additional information not included in the warrant application that could have been used to secure a valid search warrant if the initial application had been denied, and did the officers have sufficient untainted information to secure a warrant before the evidence might have been lost or destroyed?</p> <p>Does the doctrine of inevitable discovery apply when additional investigation would likely have resulted in a valid search warrant, but the investigation may have taken five to eight days after the initial illegal search?</p> <p>What assumptions can be made about the inevitability of finding evidence after substantial delay when the record shows no attempt by the defendant to hide or destroy the evidence?</p>	<p>03/08/2005 CERT Affirmed, Reversed & Remanded 11/23/2005 2005 WI 157</p>	<p>3 Eau Claire</p>	---
2004AP1029-CR	<p><u>State v. T. Payano-Roman</u></p> <p>Was the administration of laxatives to the defendant to move suspected drugs through the defendant's body a private action by medical personnel or a search by state actors? If the administration of laxatives was a state-sponsored search, what factors should be utilized to analyze the reasonableness of the search and was the administration of laxatives reasonable under those factors? If the administration of laxatives is determined to have been an unreasonable search, does the doctrine of inevitable discovery nonetheless allow the admissibility of the evidence obtained from the search?</p>	<p>10/03/2005 REVW Oral Arg 02/22/2006</p>	<p>1 Milw</p>	<p>06/22/2005 Pub 2005 WI App 118 701 NW2d 72</p>
2004AP1092-CR	<p><u>State v. G. Taylor</u></p> <p>Is a sentence of twelve years of initial confinement and six years of extended supervision excessive for this eighteen-year-old defendant who had non-forced sexual intercourse with a fifteen-year-old girl?</p>	<p>06/01/2005 REVW Oral Arg 11/16/2005</p>	<p>2 Racine</p>	<p>Summary Disp.</p>

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WISCONSIN SUPREME COURT PENDING CASES

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2004AP1208	<u>State v. D. Beyer</u> In a Wis. Stat. Ch. 980 civil commitment case, is there a constitutional, and/or statutory right to a reasonably prompt probable cause hearing under Wis. Stat. § 980.09(2) following a periodic psychological examination, and, if so, what is the proper remedy for a violation?	03/08/2005 CERT Affirmed 01/10/2006 2006 WI 2	4 Green	---
2004AP1252	<u>J. Mair v. Trollhaugen Ski Resort, et al</u> Whether Wis. Stat. § 893.89, statute of repose, applies to "safe place" claims brought under Wis. Stat. § 101.11 for injuries allegedly arising out of structural defects in a premise? Is there a difference between "structural defects" and "unsafe conditions associated with a structure" for purposes of the application of Wis. Stat. § 893.89 to Wis. Stat. § 101.11 requiring that Wis. Stat. § 893.89 bar a safe place claim that arises after an exposure period if it is based on a "structural defect" but not if it is based on an "unsafe condition" associated with the structure?	10/14/2005 REVV	3 Polk	06/22/2005 Pub 2005 WI App 116 624 NW2d 699
2004AP1254	<u>A. Maciolek, et al v. City of Milwaukee Employees' Retirement System Annuity and Pension Board</u> Is a court proceeding under Wis. Stat. § 867.046(1m) required before pension benefits set forth in a marital property agreement established pursuant to Wis. Stat. §§ 766.58(3)(f) and 705.20 can be transferred?	06/01/2005 REVV Oral Arg 12/02/2005	1 Milw	4/29/05 Pub 2005 WI App 74 280 Wis 2d 585 695 NW 2d 875
2004AP1305 2004AP1306	<u>Brown County v. Shannon R.</u> Should the Indian Child Welfare Act's higher burden of proof apply to the evidence in a TPR trial? Does the court's referral of the case to a court administrator for reassignment constitute a "disqualification" under Wis. Stat. § 48.315(1)(c) and, if it is, does the statute toll the time limits until another judge is appointed or until the next hearing? Is it error to prohibit a parent from presenting expert opinion testimony on the likelihood of a parent's ability to meet conditions for return of the child within one year?	02/09/2005 REVV Reversed & Remanded 11/30/2005 2005 WI 160	3 Brown	12/21/2004 Unp
2004AP1358	<u>J. Vieau v American Family Mutual Ins. Co, et al</u> Does <u>Mau v. North Dakota Ins. Reserve Fund</u> , 2001 WI 134, 248 Wis. 2d 1031, 637 N.W.2d 45 overrule <u>Peabody v American Family Mutual Ins. Co.</u> , 220 Wis. 2d 340, 582 N.W.2d 753 (Ct. App. 1998) in the application of indemnity policies under Wis. Stat. § 632.32(6)(b)(1)? Did the court of appeals err in applying § 632.32(5)(e) to this case due to the public policy reasons asserted in <u>Peabody</u> ?	05/11/2005 REVV Oral Arg 12/01/2005	3 Brown	02/24/2005 Pub 2005 WI App 34 278 Wis 2d 683 693 NW2d 127

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2004AP1359	<u>K. Yorgan v. T. Durkin</u> Did the defendant, an attorney, fail to fulfill a contractual obligation by refusing to pay for services provided to the attorney's client by the petitioner, a chiropractor, because the attorney never signed the "authorization and doctor's lien" signed by the attorney's client?	06/01/2005 REVV Oral Arg 11/15/2005	2 Racine	12/21/2004 Unp
2004AP1435-CR	<u>State v. T. Booker</u> Is circumstantial evidence, such as testimony of a minor witness and that of a police detective describing the contents of pornographic videotapes, sufficient to convict a defendant of exposing harmful materials to minors under Wis. Stat. § 948.11?	10/14/2005 REVV Oral Arg 02/23/2006	1 Milw	08/31/2005 Pub 2005 WI App 182 704 NW2d 336
2004AP1513	<u>A. Welin v. American Family Mutual ins. Co., et al</u> Does a policy definition of "underinsured motor vehicle" constitute a reducing clause that is prohibited by Wis. Stat. § 632.32(4m) and 5(i) if it compares the UIM limits to the limits of the tortfeasor's policy without taking into account the amount available to the insured from the tortfeasor's policy after payment to other injured parties? Does the definition of an underinsured vehicle as one where the tortfeasor has liability limits less than the UIM limits result in illusory coverage where there are multiple claimants such that the UIM insured will never recover the limits of the tortfeasor's policy? Is a comparison of the tortfeasor's liability limits to the UIM limits in order to trigger UIM coverage different than a comparison of the tortfeasor's "insurance coverage" to the UIM limits?	08/25/2005 REVV Oral Arg 01/10/2006	3 Chippe	06/22/2005 Unp
2004AP1519-CR	<u>State v. V. Brockdorf</u> Does <u>Garrity v. New Jersey</u> , 385 U.S. 493 (1967) require suppression of an incriminating statement where the defendant is a police officer and has an allegedly reasonable subjective belief that she must make the statement or lose her job?	03/08/2005 REVV Oral Arg 10/12/2005	1 Milw	01/26/2005 Unp
2004AP1594-FT	<u>Megal Development Corp. v. C. Shadof, et al</u> Does Wis. Stat. § 806.19(4) require the satisfaction of a judgment debt discharged in bankruptcy where the debtor's homestead equity exceeds the allowable homestead exemption and where the debtor failed to seek discharge of the judgment lien in the bankruptcy court?	12/15/2004 CERT Reversed 11/08/2005 2005 WI 151	2 Wauke	---

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2004AP1609-CR	<p><u>State v B. Marquardt</u> Consol. w/2004AP958-CR</p> <p>Does the search warrant application in this case meet the third test set out in <u>United States v. Leon</u>, 468 U.S. 897 (1984) that it must not be so lacking in indicia of probable cause as to render the officers' belief in its existence entirely unreasonable?</p> <p>When considering that issue, may the court consider facts known by the officers by not included in the search warrant application?</p> <p>Did the investigation in these cases meet the "significant investigation" test set out in <u>State v. Eason</u>, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 62?</p> <p>Does the doctrine of inevitable discovery apply if the officers had additional information not included in the warrant application that could have been used to secure a valid search warrant if the initial application had been denied, and did the officers have sufficient untainted information to secure a warrant before the evidence might have been lost or destroyed?</p> <p>Does the doctrine of inevitable discovery apply when additional investigation would likely have resulted in a valid search warrant, but the investigation may have taken five to eight days after the initial illegal search?</p> <p>What assumptions can be made about the inevitability of finding evidence after substantial delay when the record shows no attempt by the defendant to hide or destroy the evidence?</p>	<p>03/08/2005 CERT Affirmed, Reversed & Remanded 11/23/2005 2005 WI 157</p>	<p>3 Eau Claire</p>	---
2004AP1793	<p><u>S. Drinkwater v. American Family Mutual Ins. Co, et al</u></p> <p>Should the choice-of-law and subrogation provisions in a health insurance policy issued by an Iowa employer to a Wisconsin resident be given effect in a Wisconsin tort case, without regard to Wisconsin's "made whole" doctrine?</p>	<p>11/11/2005 CERT</p>	<p>4 Grant</p>	---

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2004AP1877	<u>G. Richards v. First Union Securities, Inc.</u> What evidence must a defendant produce in order to vacate a default judgment for insufficient service of process on a corporation under Wis. Stat. § 801.11(5)(a), especially with respect to whether an individual is a "managing agent" of the corporation? Who bears the burden of persuasion that service was inadequate and how does that burden interact with the rule that a circuit court judgment is void if service was not properly effected? See <u>Emery v. Emery</u> , 124 Wis. 2d 613, 369 N.W.2d 728 (1985); <u>West v. West</u> , 82 Wis. 2d 158, 262 N.W.2d 87 (1978); <u>Danielson v. Brody Seating Co.</u> , 71 Wis. 2d 424, 238 N.W.2d 531 (1976)? May an appellate court "address and litigate" a mixed issue of law and fact on appeal without violating a party's due process rights?	11/15/2005 REVW	2 Wauke	07/27/2005 Pub 2005 WI App 164 702 NW2d 45
2004AP1991	<u>T. Butler, et al v. Advanced Drainage Systems, et al</u> Did the court of appeals violate the <u>Palsgraf v. Long Island R.R. Co.</u> , 248 N.Y. 339, 162 N.W. 99 (1928)(Andrews, J., dissenting) dissent principles by concluding that the defendants may owe a duty of ordinary care to some parties, but not to others? If not, did the court of appeals err in its application of the Restatement (2d) of Torts § 324A to the facts of this case?	09/08/2005 REVW Oral Arg 01/12/2006	3 Washb	05/25/2005 Pub 2005 WI App 108 698 NW2d 117
*2004AP2010-CR	<u>State v. L. Anderson</u> Is a defendant entitled to a new trial where requests to review evidence by a jury in deliberation were not met by the trial court nor communicated to the parties' counsel until after verdict?	12/14/2005 REVW	1 Milw	11/30/2005 Pub 2005 WI App 238
2004AP2035-CR	<u>State v. D. Smith</u> Did the trial court properly deny a motion to strike a juror for cause (objective bias) when, during voir dire, the juror stated that she is an administrative assistant in the district attorney's office prosecuting the case?	05/11/2005 REVW Oral Arg 12/06/2005	1 Milw	02/24/2005 Unp
2004AP2232	<u>Village of Cross Plains v. K. Haanstad</u> Does a person operate a motor vehicle under Wis. Stat. § 346.63 by sliding from the front passenger's seat over toward the driver's seat of an already parked and running motor vehicle when the person did not drive the vehicle to that location, did not place the vehicle in park, is not the person who left the motor running, and did not touch any of the controls of the vehicle?	09/08/2005 REVW Oral Arg 01/11/2006	4 Dane	06/22/2005 Unp

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2004AP2322	<u>M. Sondag, et al v Dave Kohel Agency, Inc.</u> Is a real estate broker entitled to a broker's commission under a listing contract when the listed real estate is condemned and acquired by a governmental agency during the listing? If the real estate listing contract permits recovery of a broker's commission in a condemnation, does public policy preclude such payment?	10/14/2005 CERT	2 Kenos	---
2004AP2330 2004AP2331	<u>State v. Robert K.</u> Can a fact finding hearing in a TPR case be continued beyond mandatory time limits without the requirement of a good cause finding if the guardian ad litem consents to the continuance?	02/09/2005 REVV Affirmed 11/18/2005 2005 WI 152	1 Milw	12/21/2004 Unp
2004AP2481-CR	<u>State v. M. Jensen</u> Did the circuit court err in holding that the victim's voicemail statements to a police officer and a letter she wrote to the police department were testimonial under <u>Crawford v. Washington</u> , 124 S. Ct. 1354 (2004), and therefore inadmissible at the defendant's murder trial? If the voicemail message and letter are testimonial, should this evidence nevertheless be admitted at the defendant's murder trial under the doctrine of forfeiture by wrongdoing, if the State, outside the jury's presence, can convince the circuit court by a preponderance of the evidence that the defendant killed his wife? Did the circuit court err in holding that the victim's statements to her neighbors and her son's teacher were not testimonial and therefore admissible at trial? If the statements are testimonial, is the State entitled to a pretrial hearing on whether the statements may be admitted under the doctrine of forfeiture by wrongdoing?	07/28/2005 BYPA Oral Arg 01/11/2006	2 Kenos	---
2004AP2582	<u>Jackson County v. DNR, et al</u> (Consol. w/2005AP545) Can a county, after taking a tax deed to assume ownership of property on which taxes had not been paid, rescind the tax deed and return the property to the original owner without that owner's consent?	11/11/2005 CERT	4 Dane	---
*2004AP2592	<u>R. Bartholomew, et al v. Wis. Patients Compensation Fund, et al</u> May an estate recover non-economic damages for the decedent's pre-death pain and suffering in addition to the surviving spouse's wrongful death and loss of society damages?	12/14/2005 REVV	2 Kenos	Summary Disp.
2004AP2746	<u>Affordable Erecting, Inc. v. Neosho Trompler, Inc.</u> Is a party equitably estopped from re-filing a court action by withholding approval of a mediation agreement when another party relied upon their inaction as approval of the agreement?	09/08/2005 REVV Oral Arg 02/21/2006	2 Wash	08/31/2005 Pub 2005 WI App 189 703 NW2d 737

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2004AP2820-CR	<u>State v. R. Walker</u> Must a defendant who has filed a motion for sentence modification under Wis. Stat. § (Rule) 809.30 and then is resentenced pursuant to that motion, file a second motion for sentence modification in the circuit court prior to taking an appeal to the court of appeals or does the resentencing constitute "compelling circumstances" so as to avoid the necessity for filing a second motion for sentence modification? What is the impact of Wis. Stat. §§ (Rule) 809.30(2)(b), 809.30(2)(h), and 809.30(2)(j) on the issue of the need to file a second motion for sentence modification under these facts?	10/03/2005 REVV Oral Arg 02/22/2006	2 Green Lake	Summary Disp.
*2004AP2936-CR	<u>State v. B. Hibel</u> Does <u>State v. Dubose</u> , 2005 WI 126; ____ Wis. 2d ____; 699 N.W. 2d 582 control the admissibility of an eyewitness identification resulting from procedures other than "inherently suggestive" showups? Does <u>Dubose</u> implicitly overrule the court's decision in <u>State v. Marshall</u> , 92 Wis. 2d; 284 N.W. 2d 592 (1979)? Did the Court of Appeals err in taking judicial notice of facts derived from a source "subject to reasonable dispute" under Wis. Stat. § (Rule) 902.01(2)?	12/14/2005 REVV	2 Wauke	10/28/2005 Pub 2005 WI App 228
2004AP2989-CR	<u>State v. S. Fisher</u> Whether the concealed weapon statute can be enforced against a tavern owner who keeps a loaded gun in the glove compartment of his car for protection because he routinely makes large cash deposits in a high-crime neighborhood?	10/14/2005 CERT Oral Arg 02/23/2006	4 Jacks	---
*2004AP3384	<u>B. Spiegelberg v. State of Wisconsin, et al</u> Where a property in a partial taking consists of multiple contiguous parcels, is the property valued at (1) fair market value of the property as a whole, or (2) the sum of the fair market value of each individual tax parcel?	12/14/2005 CERT	Winne	---

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*2005AP2-NM	<u>Kenosha County Dept. of Human Services v. Jodie W.</u> Whether failure to meet an impossible condition of review is an appropriate and constitutional ground for termination of parental rights? Whether an agency satisfies its duty to make a "reasonable effort" to provide court ordered services when the services it provides necessarily do not contribute to a parent's ability to meet a condition of return, and where the parent's accompanying failure to meet that condition is used as the grounds for the termination of parental rights? Whether a circuit court errs in accepting a no contest plea as "knowing" when it is given in an internally inconsistent plea questionnaire or plea colloquy that indicates that the parent has certain alternatives that she does not in fact have, or waives other rights she clearly intends to reserve? Whether the court of appeals erred when it refused to toll the time period set forth in Wis. Stat. § (Rule) 809.107(6)(e)? Whether the circuit court or the court of Appeals erred in refusing to allow the parent an opportunity to present additional evidence to demonstrate her early release or her fitness as a parent?	12/14/2005 REVV	2 Kenos	Summary Disp.
2005AP121	<u>L. Mueller v. McMillan Warner Ins Co., et al</u> What standard of care must be provided to an injured individual at or near the scene of an accident to qualify a caregiver for immunity from civil liability under Wis. Stat. § 895.48(1), the "Good Samaritan" statute? What constitutes "emergency care" for purposes of Wis. Stat. § 895.48(1)?	10/14/2005 REVV	3 Mara	09/20/2005 Pub 2005 WI App 210
2005AP239-AC	<u>S. Raschein v. M. Frey</u> Whether the divorce of foster parents qualifies as "a dissolution of a marriage" sufficient to trigger the visitation statute, Wis. Stat. § 767.245, when one of the foster parents subsequently adopts the child; or if not, whether a former foster parent whose ex-spouse has adopted the foster child has standing to raise an equitable visitation claim under <u>Holtzman v Knott</u> , 193 Wis. 2d 649, 533 N.W2d 419 (1995)?	07/28/2005 CERT Oral Arg 12/13/2005 Vol. Dism. 12/12/2005	4 Sauk	---
2005AP545	<u>Jackson County v. DNR, et al</u> (Consol. w/2004AP2582) Can a county, after taking a tax deed to assume ownership of property on which taxes had not been paid, rescind the tax deed and return the property to the original owner without that owner's consent?	11/11/2005 CERT	4 Dane	---

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*2005AP948-CR	<u>State v. J. Bonds</u> Does Wis. Stat. § 973.12 require the state to allege the specific prior convictions used as the basis of a repeater allegation before or at arraignment and before a plea acceptance? Can Consolidated Court Automation Programs (CCAP) records form the basis of proof beyond a reasonable doubt for a repeater allegation?	12/14/2005 REVV	1 Milw	10/28/2005 Unp

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